

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

AC002

In the Matter of:

BENNINGTON LANDFILL SUPERFUND SITE
Bennington, Vermont

U.S. EPA Region I
CERCLA Docket No.
I-91-1094

9368

Banner Publishing Corporation, Town of
Bennington, Bennington Iron Works, Inc.,
Bijur Lubricating Corporation, Chemical
Fabrics Corporation, Courtaulds Structural
Composites, Inc., East Mountain Transport,
Environmental Action, Inc., Eveready Battery
Corporation, G.C.D.C., Inc., Johnson
Controls, Inc., Textron, Inc.,

Respondents

Proceeding Under Section 122(h) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as amended,
42 U.S.C. § 9622(h)

RESPONSIVENESS SUMMARY

Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), requires EPA to publish notice of a proposed section 122(h) settlement in the Federal Register, and, for a 30-day period beginning on the date of publication of notice in the Federal Register, to provide an opportunity to persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement. Section 122(i) also requires that EPA consider any comments filed during the 30-day period, and provides that EPA may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

Regarding the above-referenced action, EPA published notice of the proposed settlement in the Federal Register on January 3, 1992. EPA did not receive any written comments on the settlement during the 30-day period beginning on January 3, 1992 and ending on February 3, 1992. Therefore, EPA has not received comments which disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.


Julie Belaga
Regional Administrator

2/18/92
Date

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WHEREAS, the United States Environmental Protection Agency (EPA) alleges that hazardous substances, pollutants, and/or contaminants as defined by Sections 101(14) and 101(33) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601(14) and 9601(33), have been or are threatened to be released into the environment from the Bennington Landfill Superfund Site in Bennington, Vermont (hereinafter "Site" or "Facility");

WHEREAS, based on the results of groundwater and surface water sampling, and because of its proximity to residential communities, the Site was listed on the National Priorities List

(NPL) in March 1989, pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B);

WHEREAS, EPA alleges that such releases or threatened releases required response actions to be undertaken at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and state law;

WHEREAS, EPA alleges that in performing these response actions, response costs have been incurred by EPA at or in connection with the Site totalling \$247,400.80 as of February 9, 1991, exclusive of interest, and that additional response costs will be incurred in the future;

WHEREAS, EPA alleges that the response actions performed to date and the response costs incurred in connection with the Site are consistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300;

WHEREAS, EPA alleges that the parties who have signed this Agreement and who are listed in Appendix A ("Settling Parties") are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are liable for response costs incurred and to be incurred at or in connection with the Site;

WHEREAS, the Settling Parties do not admit any of EPA's allegations; and

WHEREAS, EPA and the Settling Parties desire to settle certain claims arising from the Settling Parties' alleged

involvement with the Site without litigation and without admission or adjudication of any issue of fact or law;

NOW, THEREFORE, EPA and the Settling Parties, in consideration of the promises and covenants herein, and intending to be legally bound hereby, agree as follows:

JURISDICTION

1. This Agreement is made and entered into by the United States Environmental Protection Agency and the Settling Parties whose names appear in the caption above and who have executed the attached signature pages. This Agreement concerns the recovery of costs incurred by EPA at the Bennington Landfill Superfund Site as of February 9, 1991. The authority to enter into such an Agreement is vested in the President by Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1). This authority was delegated to the Administrator of the United States Environmental Protection Agency on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (January 29, 1987), and further delegated to the Regional Administrator, EPA Region I, by EPA Delegation No. 14-14-D (Sept. 13, 1987).

2. The Settling Parties consent to and will not contest EPA's authority to enter into this Agreement, and agree and submit to the jurisdiction asserted in this Agreement for the purpose of any subsequent proceedings for the enforcement of this Agreement, but expressly reserve their rights to contest the

authority or jurisdiction of EPA to issue any other or subsequent order.

PARTIES BOUND

3. This Agreement shall be binding upon the Settling Parties, their directors, officers, employees, agents, successors and assigns. Each signatory to this Agreement represents that she or he is fully authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by her or him. The Settling Parties agree to undertake all actions required by this Agreement. The Settling Parties shall be jointly and severally liable for any payments specified in this Agreement and for any penalties arising from this Agreement as specified herein.

STATEMENT OF PURPOSE

4. In entering into this Agreement, the mutual objective of EPA and the Settling Parties is to settle EPA's claims against the Settling Parties for response costs incurred at or in connection with the Site as of February 9, 1991.

REIMBURSEMENT FOR RESPONSE COSTS

5. The Settling Parties shall make payment to EPA by certified or cashier's check in the amount of \$197,920.64 (the

"Settlement Payment") within thirty (30) days after the effective date of this Agreement.

STIPULATED PENALTIES

6. If the Settling Parties fail to tender the entire Settlement Payment, including all applicable interest, within thirty (30) days after the effective date of this Agreement, each party who is a signatory to this Agreement shall be individually liable to pay the sums set forth below as stipulated penalties:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day</u>
1st - 7th day	\$1,000.00
8th - 14th day	\$2,000.00
each day thereafter	\$5,000.00

7. Any such penalty shall be due and payable within ten (10) days of the receipt of a written demand from EPA. Payment for stipulated penalties shall be made as set forth in Paragraph 9 below. Penalties shall accrue regardless of whether EPA has notified the Settling Parties of their failure to make a timely payment.

8. In the event that the Settling Parties fail to pay the Settlement Payment and/or stipulated penalties as provided in Paragraphs 5 - 7, EPA may institute proceedings in the United States District Court to recover such Settlement Payment and/or stipulated penalties and any other appropriate relief. In any such action the terms of this Agreement shall not be subject to

judicial review. The stipulated penalties set forth in this section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of a refusal or failure to comply with the terms or conditions of this Agreement, including, but not limited to, an enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3).

METHOD OF PAYMENT

9. The Settling Parties shall make all payments to EPA required under Paragraphs 5 and 7 above by certified or cashier's check, payable to the "Environmental Protection Agency, Hazardous Substances Superfund." The check shall reference the name of the Site and the EPA docket number for this Agreement. The transmittal letter accompanying each such payment shall reference that the payment is for Response Costs incurred at the Bennington Landfill Superfund Site, and shall be mailed to the following address:

Region I
U.S. Environmental Protection Agency
Attn: Hazardous Substance Superfund Accounting
P.O Box 360197M
Pittsburgh, Pennsylvania 15251

The Settling Parties shall simultaneously send a copy of the transmittal letter and check to:

Andrew Raubvogel
Assistant Regional Counsel
U.S. Environmental Protection Agency
John F. Kennedy Federal Building, RCV-23
Boston, Massachusetts 02203

RELEASE FROM LIABILITY

10. In consideration, and upon payment, of the amount specified in Paragraph 5 of this Agreement, EPA agrees that such payment shall represent full satisfaction of the United States' claim against the Settling Parties for any and all civil liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for reimbursement of response costs incurred at or in connection with the Site as of February 9, 1991. Nothing in this Agreement shall be construed to require EPA to enter into any later agreement with respect to the Bennington Landfill Superfund Site with any Settling Party, or to prevent EPA from performing any response actions at the Site.

COVENANT OF THE SETTling PARTIES

11. The Settling Parties hereby covenant not to sue the United States for any claims related to or arising from this Agreement, including any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established pursuant to 26 U.S.C. § 9507. Nothing in this Agreement shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611.

EPA'S RESERVATION OF RIGHTS

12. Nothing in this Agreement is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against the Settling Parties for:

a. Any liability as a result of failure to make timely payments as required by this Agreement; or

b. Any matters not expressly included in Paragraph 10, including without limitation, any liability for: i) future injunctive relief at the Site; ii) response costs incurred at the Site after February 9, 1991; or iii) damages to natural resources and any costs associated with the assessment of natural resource damages which may have been incurred by any federal trustee of affected natural resources.

13. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Agreement. Except as specifically set forth herein, this Agreement shall not estop or limit any legal or equitable claims of the United States against the Settling Parties, their agents, contractors, or assigns, including but not

limited to, claims related to releases of hazardous substances or other pollutants or contaminants.

SETTLING PARTIES' RESERVATION OF RIGHTS

14. Except as set forth in this Agreement, the Settling Parties expressly reserve all rights and defenses that each or any of them may have in law or in equity for any claims or causes of action it may have against any party including the United States, its agencies, departments and instrumentalities. Any claims not expressly waived by the Settling Parties shall be deemed reserved. The execution of this Agreement is not an admission of liability with respect to any issue dealt with in this Agreement nor is it an admission or denial of any factual allegation.

ENFORCEMENT ACTIONS AGAINST NON-SETTLORS

15. It is the policy of the United States to identify potentially responsible parties who do not participate in CERCLA settlements and, subject to its non-reviewable prosecutorial discretion, to seek reimbursement of response costs not covered by settlement and/or take other appropriate action against such non-settling parties pursuant to the provisions of CERCLA.

CONTRIBUTION PROTECTION

16. With regard to claims for contribution against the Settling Parties for matters addressed in this Agreement, the parties hereto agree that the Settling Parties are entitled to such protection from contribution actions or claims to the extent provided by Section 122(h)(4) of CERCLA, 42 U.S.C. § 9622(h)(4).

THIRD PARTY RIGHTS

17. EPA and the Settling Parties recognize that Sections 113(h) and 310 of CERCLA and applicable law govern the rights, if any, of persons not parties to this Order to enforce the terms of this Order. Nothing in this Order shall be construed as creating or expanding any rights enforceable by any person not a party to this Order beyond those rights, if any, afforded them under Sections 133(h) or 310 of CERCLA or applicable law.

PUBLIC COMMENT PERIOD

18. Final acceptance of this Agreement by EPA shall be subject to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), which requires EPA to publish notice of the proposed settlement (the Agreement) in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment on the proposed settlement, and to consider comments filed in determining whether to consent to the proposed settlement. After consideration of any comments submitted during the thirty (30)

day public comment period held pursuant to Section 122(i) of CERCLA, EPA may withhold consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

SEPARATE DOCUMENTS

19. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

APPROVAL FROM THE ATTORNEY GENERAL

20. This Agreement has received prior written approval from the Attorney General, pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

EFFECTIVE DATE; COMPUTATION OF TIME

21. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Parties that the public comment period pursuant to Paragraph 18 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement. For purposes of this Agreement, the term day shall mean a calendar day unless otherwise noted herein. When computing any period of time under this Agreement, if the last day would fall on a Saturday, Sunday

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or legal holiday, the period shall run until the next working day.

IT IS SO AGREED.

U.S. ENVIRONMENTAL PROTECTION AGENCY

By:

Julie Belaga
Regional Administrator

Date

Andrew Raubvogel
Assistant Regional Counsel

Date

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IT IS SO AGREED:

Name of Settling Party: _____

By: _____

Title: _____

Date: _____

Agent Authorized to Accept Service on Behalf of _____:

Name:

Title:

Address:

Telephone: